

HOUSE BILL REPORT

HB 2475

As Reported by House Committee On:

Commerce & Labor

Appropriations

Title: An act relating to collective bargaining regarding hours of work for individual providers.

Brief Description: Requiring collective bargaining regarding hours of work for individual providers.

Sponsors: Representatives Conway, Williams, Fromhold, Wood, B. Sullivan, Simpson, Sells, Ormsby and Green.

Brief History:

Committee Activity:

Commerce & Labor: 1/12/06, 2/1/06 [DPS];

Appropriations: 2/4/06 [DPS(CL)].

Brief Summary of Substitute Bill

- Requires, at the bargaining representative's request, collective bargaining over the implementation of agency core responsibilities for long-term in-home care as it affects hours of work for individual providers.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Conway, Chair; Wood, Vice Chair; Crouse, Hudgins, Kenney and McCoy.

Minority Report: Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member and Chandler, Assistant Ranking Minority Member.

Staff: Chris Cordes (786-7103).

Background:

Long-term Care Services Provided by Home Care Workers

The Department of Social and Health Services' (DSHS) contracts with agency and individual home care workers (individual providers) to provide long-term care services for elderly and disabled clients (consumers) who are eligible for publicly funded services through the DSHS's Aging and Adult Services and Developmental Disabilities programs. Home care workers

provide consumers with personal care assistance with various tasks such as toileting, bathing, dressing, ambulating, meal preparation, and household chores. The individual providers are hired and fired by the consumer, but are paid by the DSHS.

The Home Care Quality Authority (HCQA) has responsibility for establishing qualifications for individual providers, recruiting and training individual providers, and providing assistance to consumers in finding care by establishing a referral registry.

The DSHS "Shared Living" Rule

In implementing the long-term care services program, the DSHS adopted a rule, generally known as the "shared living" rule, under which the DSHS will not pay for services such as shopping, housework, laundry, or meal preparation if the individual provider lives in the same household with the consumer. According to hearing examiner findings made in an unfair labor practice case filed with the Public Employment Relations Commission (PERC), this rule has resulted in a 15 percent deduction from the hours allotted to individual providers as compensation for their services in homes where they also reside.

Collective Bargaining for Individual Providers

Individual providers have collective bargaining rights under the Public Employees' Collective Bargaining Act (PECBA) administered by the PERC. The law explicitly states that wages, hours, and working conditions are determined solely through collective bargaining and, except for the HCQA, no state agency may establish policies or rules governing wages or hours of individual providers. However, this provision also states that it does not modify various responsibilities of the DSHS, including the authority to establish a consumer's plan of care and determine the hours of care for which a consumer is eligible. In addition, it does not modify the Legislature's right to make programmatic modifications to the state's long-term care services program.

The first contract to be implemented under the individual provider collective bargaining law was effective until June 30, 2005. By law, negotiations for a new agreement must begin by May 1 of the year before the year in which an existing collective bargaining agreement expires. In April 2004, the union representing the individual providers and the Governor's Labor Relations Office began negotiating for a successor contract. By August, a PERC mediator determined that the parties were at impasse on several issues, which were certified to an arbitrator. One of these issues involved the "shared living" rule.

On August 31, 2004, the Office of Financial Management filed an unfair labor practice with the PERC, alleging that the union failed to bargain in good faith by insisting on submitting some issues, including the "shared living" rule issue, to arbitration. The PERC hearing examiner agreed that the union had committed an unfair labor practice, finding that the Legislature intended the DSHS to retain its core responsibility to administer the home care program and to set the hours of care and the plan of care for consumers receiving services. This decision was affirmed by the PERC on October 12, 2005.

Summary of Substitute Bill:

At the request of the bargaining representative for the individual providers, the Governor or designee must collectively bargain over the implementation of DSHS's core responsibilities as it affects hours of work for individual providers, including but not limited to whether services are considered compensable work, what conditions apply to determine compensation, the time needed to perform authorized services, and whether personal characteristics, such as a shared residence with the consumer, may be considered in determining whether an individual is compensated.

The language recognizing the DSHS authority to establish plans of care for consumers is modified to refer, instead, to the agency's core responsibilities over managing long-term in-home care, including types of services and level of care to which consumers are entitled.

Substitute Bill Compared to Original Bill:

The substitute: (1) deletes the requirement for bargaining over a DSHS policy or rule that applies generally to a significant group of individual providers or consumers and may result in a significant change in the number of hours worked; (2) adds language recognizing the DSHS's core responsibilities over managing long-term in-home care, including types of services and level of care that consumers are entitled to; and (3) adds that, at the request of the bargaining representative for the individual providers, the Governor or designee must collectively bargain over the implementation of DSHS core responsibilities as it affects hours of work for individual providers, including but not limited to whether services are considered compensable work, what conditions apply to determine compensation, the time needed to perform authorized services, and whether personal characteristics, such as a shared residence with the consumer, may be considered in determining whether an individual is compensated.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: (In support) Many individual providers have clients whose authorized hours of care were reduced even though the client's condition had not changed. Hours and wages are closely linked, and eliminating case manager discretion to override the old shared living rule caused problems. The biggest impact of the Department's new implementation of the shared living rule is on the providers who often do 24/7 care without compensation. Under these circumstance, they cannot go out and find another job to increase their compensation. The improvements in working conditions that the Legislature funded have been undercut by the Department's shared living rule, which the Department implemented without bargaining over the cuts in hours. But a temporary care giver, who comes into the home, will get paid for those hours because he or she does not live in the home. The individual providers are only

asking to get paid for the work that they do for the client. In negotiations, the parties receive input from the Health Care Quality Authority which represents the interests of the consumer. The bill does not require negotiation of plans of care, only broad policy questions when they have significant impact.

(Neutral) Bargaining in this unit has some unique features. It does not work the same as in a conventional employee-employer relationship. The impacts of the agency's policies are not directly on working conditions. There should be a distinction between bargaining the agency's decision and bargaining the impacts of those decisions. "Impact" bargaining is a usual type of bargaining. Bargaining agency rules, however, raises some questions especially since this process could end in arbitration. There will be a need for additional personnel for a program manager and other staff to work with the union and do data analysis.

(Information only) The obligation to bargain exists 24/7 and the bill does not reduce rule-making procedural requirements. One outcome could be that if bargaining resulted in an agreement to have no rule, then rule-making would not be initiated.

Testimony Against: This bill covers many rules, not just the shared living rule. There is concern that some rules will not align the interests of the consumer and the care giver. For example, if the Department gives "grants" to the consumer, instead of reimbursement to the care giver, the grant program will not guarantee that the consumer spends the money to pay for care giver hours. The rule-making process is the chance for public input. The Legislature should not enact this bill without considering the interests of the disability community.

Persons Testifying: (In support) Catherine Byrd; and Suzanne Wall, Service Employees International Union, Local 775.

(Opposed) David Lord, Washington Protection and Advocacy Association.

(Neutral) Bill Moss, Department of Social and Health Services; and Steve McLain, Office of Financial Management.

(Information only) Marvin Schurke, Public Employment Relations Commission.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Commerce & Labor be substituted therefor and the substitute bill do pass. Signed by 20 members: Representatives Sommers, Chair; Fromhold, Vice Chair; McDonald, Assistant Ranking Minority Member; Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, Miloscia, Priest, Schual-Berke, P. Sullivan and Walsh.

Minority Report: Do not pass. Signed by 10 members: Representatives Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Armstrong, Bailey, Buri, Chandler, Clements, Hinkle, Pearson and Talcott.

Staff: David Pringle (786-7310).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Labor:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: We strongly support this. This bill has a long history and we will not go over it again today. It is not the DSHS, but the union that can trigger negotiation under this bill, and we don't know why full-time staff would be needed to implement the bill. The DSHS still gets to establish plans of care, and client rights are retained as they exist today. We are working closely with DSHS to address the remaining concerns with the bill, and we want to solve this problem.

Testimony Against: None.

Persons Testifying: Candace Inagi, Service Employees International Union 775.

Persons Signed In To Testify But Not Testifying: None.